

DAE  
JRW



DEC 03 2004 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of  
Todd Barrett  
Application No. 09/960,223  
Filed: September 20, 2001  
Docket No. 1092-PA428

Renewed Petition under 37 CFR 1.137(b)

Mail Stop PETITION  
Commissioner of Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

This letter is in response to a dismissal of the petition of the assignee of the subject patent application to revive that application. (A copy of the dismissal notice is attached.) That petition was dismissed based on the failure of the assignee to state that the entire delay in filing a response to an office was unintentional and the Assignee's failure to comply with 37 CFR 3.73(b). Assignee with this letter corrects these deficiencies and requests reconsideration of the dismissal.

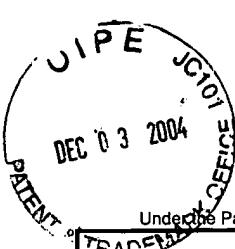
- 1) A completed copy of form PTO/SB/96 (09-04) is attached documenting the assignment of the subject application to Trex Enterprises Corporation.
- 2) I am John R. Ross, Vice President Trex Enterprises Corporation and I state on behalf of Trex Enterprises Corporation that the entire delay in filing the required reply from the date due for the reply until the filing of the grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Based on the above the assignee and the applicant request reconsideration of the dismissal of our earlier petition to revive and request the revival of the subject application.

Respectively submitted,

John R. Ross  
Vice President Trex Enterprises  
10455 Pacific Center Court  
San Diego, CA 92121  
Regis. No. 30530

**BEST AVAILABLE COPY**



PTO/SB/96 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**STATEMENT UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: TREX ENTERPRISES CORP. TODD BARRETTApplication No./Patent No.: 09/960,223 Filed/Issue Date: 9/20/2001Entitled: METHOD FOR PROVIDING VARIABLE OPTICAL ATTENUATIONTREX ENTERPRISES CORP., a CORPORATION  
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1.  the assignee of the entire right, title, and interest; or2.  an assignee of less than the entire right, title and interest.

The extent (by percentage) of its ownership interest is \_\_\_\_\_ %

in the patent application/patent identified above by virtue of either:

A  An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 012629, Frame 0103, or for which a copy thereof is attached.

OR

B.  A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:1. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.2. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.3. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached. Additional documents in the chain of title are listed on a supplemental sheet. Copies of assignments or other documents in the chain of title are attached.

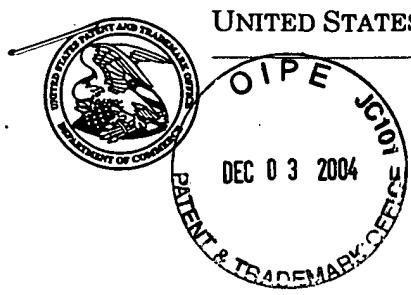
[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Joh R. Ross  
Signature11/30/2004  
DateJoh R. Ross  
Printed or Typed Name858-646-5488  
Telephone NumberV.P. INTELLECTUAL PROPERTY (REGIS. NO 30,530)  
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

GARY L. EASTMAN  
EASTMAN & ASSOCIATES  
707 BROADWAY STREET, SUITE 1800  
SAN DIEGO, CA 92101

**COPY MAILED**

NOV 23 2004

**OFFICE OF PETITIONS**

In re Application of	:
Todd Barrett	:
Application No. 09/960,223	:
Filed: September 20, 2001	:
Attorney Docket No. 1092-PA428	:

ON PETITION

This is a decision in response to a petition, filed September 20, 2004, under 37 CFR 1.137(b) to revive the above-identified application.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(l); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

The petition lacks item (3).

The petition appears to be filed by the assignee; however, the petition does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a

chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office

A courtesy copy of this decision is being mailed to petitioner. However, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed. For petitioner's convenience, a Statement under 37 CFR 3.73(b) is enclosed.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                    Mail Stop PETITION  
                                  Commissioner for Patents  
                                  Post Office Box 1450  
                                  Alexandria, VA 22313-1450

By hand:                    U.S. Patent and Trademark Office  
                                  220 20<sup>th</sup> Street S.  
                                  Customer Window, Mail Stop PETITION  
                                  Crystal Plaza Two, Lobby, Room 1B03  
                                  Arlington, VA 22202

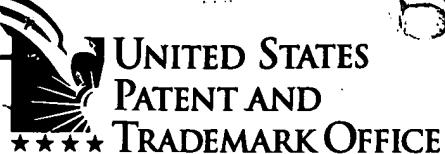
The centralized facsimile number is (703) 872-9306.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

*Sherry D. Brinkley*  
Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure: Statement under 37 CFR 3.73(b)

cc:            JOHN R. ROSS  
                  TREX ENTERPRISES CORP.  
                  10455 PACIFIC CENTER CT  
                  SAN DIEGO, CA 92121



APRIL 29, 2002

GARY L. EASTMAN  
520 W. ASH STREET  
SUITE 306  
SAN DIEGO, CA 92101

Chief Information Officer  
Washington, DC 20231  
[www.uspto.gov](http://www.uspto.gov)



\*102005822A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 02/15/2002

REEL/FRAME: 012629/0103

NUMBER OF PAGES: 2

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

BARRETT, TODD

DOC DATE: 10/18/2001

ASSIGNEE:

TREX ENTERPRISES, CORP.  
10455 PACIFIC CENTER COURT  
SAN DIEGO, CALIFORNIA 92121

SERIAL NUMBER: 09960223

FILING DATE: 09/20/2001

PATENT NUMBER:

ISSUE DATE:

MARCUS KIRK, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

03-07-2002

Form PTO-1595  
(Rev. 03/01)

RE

OMB No. 0651-0027 (exp. 5/31/2002)

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O P E  
DEC 03 2004U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

102005822

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

TODD BARRETT

2/15/02

Additional name(s) of conveying party(ies) attached?  Yes  No

## 3. Nature of conveyance:

Assignment       Merger  
 Security Agreement       Change of Name  
 Other \_\_\_\_\_

Execution Date: 10/18/014. Application number(s) or patent number(s): 09/960,223

If this document is being filed together with a new application, the execution date of the application is:

## A. Patent Application No.(s)

09/960,223

## B. Patent No.(s)

FEB 15 2002

Additional numbers attached?  Yes  No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: GARY L. EASTMAN

Internal Address: \_\_\_\_\_

Street Address: 520 WEST ASH STREET,SUITE 306City: SAN DIEGO State: CA Zip: 921016. Total number of applications and patents involved: 7. Total fee (37 CFR 3.41).....\$ 40.00 Enclosed Authorized to be charged to deposit account

## 8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

03/06/2002 DBYRNE 00000029 09960223

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11 FC:51 9. Statement and signature: 40.00 OP

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

GARY EASTMAN

Name of Person Signing

Gary Eastman

Signature

1-22-02

Date

Total number of pages including cover sheet, attachments, and documents: 2

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents &amp; Trademarks, Box Assignments

Washington, D.C. 20231

5  
Assignment

Whereas, Todd Barrett of San Diego, California, hereinafter called assignor(s), have invented certain improvements in

**"METHOD FOR PROVIDING VARIABLE OPTICAL ATTENUATION"**

and executed an application for Letters Patent of the United States of America therefor on October 18, 2001; for Application number 09/960,223, filed September 20, 2001; and

Whereas, Trex Enterprises, Corp. of 10455 Pacific Center Court, San Diego, California 92121 (assignee), desires to acquire the entire right, title, and interest in the application and invention, and to any United States patents to be obtained therefor;

Now therefore, for valuable consideration, receipt whereof is hereby acknowledged,

We, the above named assignor(s), hereby sell, assign, and transfer to the above named assignee, its successors and assigns, the entire right, title and interest in the application and invention therein disclosed for the United States and foreign countries, and all rights of priority resulting from the filing of said United States application, and we request the Commissioner of Patents to issue any Letters Patent granted upon the inventions set forth in the application to transfer to the above named assignee, its successors and assigns; and we hereby agree that assignee may apply for foreign Letters Patent on the invention and we will execute without further consideration all papers necessary in connection with the United States and foreign applications when called upon to do so by the assignee.

Date: 10/18/2001

s/

Todd K. Barrett

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of )  
TODD BARRETT ) FOR: METHOD FOR PROVIDING  
Application No.: 09/960,223 ) VARIABLE OPTICAL  
Filed: 9/20/01 ) ATTENUATION  
                        ) Group  
                        ) Art Unit: 2874

TRANSMITTAL

BOX ASSIGNMENTS

Commissioner for Patents & Trademarks  
Washington, D.C. 20231

Dear Sir:

This transmittal includes the following:

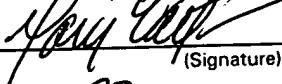
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on:

January 22, 2002

(Mailing Date)

GARY L EASTMAN

(Registered Representative)



(Signature)

January 22, 2002

(Date of Signature)

1. Recordation Form Cover Sheet.
2. Signed Assignment.
3. Check # 3003 for \$40.00 for recording a patent assignment.
4. Postcard.

Respectfully submitted,

Dated: 1-22-02



Gary L. Eastman  
Attorney for Applicant  
Registration No. 41,005

EASTMAN & ASSOCIATES  
520 West Ash Street, Suite 306  
San Diego, California 92101  
Telephone: (619) 230-1144  
Facsimile: (619) 230-1194

Docket No.: 1092-PA428

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